

HOSPITAL AND MEDICAL FACILITIES SERIES

The Hill-Burton Program

regulations

LABOR STANDARDS

QUESTIONS AND ANSWERS

DISCRIMINATION PROHIBITED--Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Therefore, all programs administered by the U.S. Department of Health, Education, and Welfare must be operated in compliance with this law.

LABOR STANDARDS

QUESTIONS AND ANSWERS

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE Division of Hospital and Medical Facilities
Architectural, Engineering, and Equipment Branch Washington, D.C. 20201

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FOREWORD

This publication contains questions and answers on the use, administration, and enforcement of the Labor Standards issued by the U.S. Department of Labor, for projects administered by the Division of Hospital and Medical Facilities. The questions are those most frequently asked the Washington Office.

Applicants, State agencies on projects being administered by them, regional office personnel, contractors, and subcontractors are expected to familiarize themselves with all provisions of the Davis-Bacon Act, as amended (40 USC 276a-5), the Copeland Act, the Anti-Kickback Regulations, the Work Hours Standards Act, the fringe benefits provisions of the Davis-Bacon Act, and the President's Executive Order 11246, dated September 24, 1965. Violations of the above requirements may result in withholding of Federal funds.

It is the mutual responsibility of the regional office, State agency, and the applicant to enforce the Labor Standards, Executive Orders, and amendments thereto.

Appreciation is expressed to the Office of the Solicitor, U.S. Department of Labor, for assistance in the development of this publication.



Harold M. Gray
Assistant
Director
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DEFINITIONS

Q: What is meant by the term "Labor Standards"?

A: Labor Standards, for purposes of this document, includes the Davis-Bacon Act, Copeland Act, and Anti-Kickback Regulations, the Contract Work Hours Standards Act and all amendments thereto pertaining to Federal construction type contracts. The Division of Hospital and Medical Facilities has prepared a publication entitled, "Labor Standards Provisions for Construction Grant Programs," incorporating the requirements of the United States Department of Labor, administered under the Hill-Burton program.

Q: What is the Davis-Bacon Act?

A: The Davis-Bacon Act is the basic labor standards law pertaining to Federal construction-type contracts. It provides that all laborers and mechanics employed on such contracts shall be paid not less than the wage rates predetermined by the Secretary of Labor for the various classifications used on the job. These rates, including fringe benefits, are predetermined by the Department of Labor on the basis of the wages and fringe benefits found to be prevailing in the locality where the construction work is to be performed.

Q: What is meant by the Copeland Act and Anti-Kickback Regulations?

A: The Copeland Act (18 USC 874) states: "Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment shall be fined not more than \$5,000 or imprisoned not more than 5 years or both."

"Anti-Kickback" Regulations (40 USC 276-C), prescribed by the Secretary of Labor, protect employees from having deductions made from their wages without their consent. The regulations thus issued also provide for the submission of weekly statements of compliance by employers.

Q: What is the Contract Work Hours Standards Act?

A: The Contract Work Hours Standards Act is an act which requires payment of not less than time and one-half for hours worked over 8 in a day or 40 in a week for laborers, mechanics, and apprentices (including watchmen and guards) employed on contracts subject to the Davis-Bacon Act.

Q: How are the Labor Standards made a part of a federally-assisted contract?

A: —

Q: What programs administered by the Division of Hospital and Medical Facilities, Public Health Service, are covered by the Davis-Bacon Act and Copeland (Anti-Kickback) Regulations and the Contract Work Hours Standards Act?

A: All programs.

Q: Who enforces the provisions of the Labor Standards?

A: The Division of Hospital and Medical Facilities is charged with primary responsibility for enforcement; however, it is the applicant's duty to obtain compliance with the provisions of the acts as they apply to their projects. For projects being administered through a State agency, the State agency has the responsibility of acting for the Surgeon General in all enforcement problems.

WAGE DETERMINATIONS

Q: What is a wage determination?

A: A finding by the Department of Labor of the hourly wage rates prevailing for laborers and mechanics on similar projects in the locality of the proposed work.

Q: What is an areawide wage determination?

Q: What is a modification of a wage determination?

A: A modification is a change in the classifications and/or a change in the hourly rates of pay contained in the original determination. However, it shall not be effective if received by the Washington Office later than ten days before the opening of the bids.

Q: How long are wage determinations in effect?

A: Wage determinations initially issued by the Secretary of Labor are effective for 120 days from the date of their issuance. If the original determination is not used in the period of its effectiveness, it is void. If included in the contract prior to its expiration, it is valid and represents the minimum rates to be paid during the performance of the contract.

Q: What is the significance of the hourly rates of pay contained in the wage determinations?

A: The hourly rates shown are the minimum wage rates required to be paid during the life of the contract. This is not a representation, however, that labor can be obtained at those rates. It is the responsibility of bidders to inform themselves as to local labor conditions and prospective changes or adjustments of wage rates.

Q: Who issues a wage determination?

A: The U.S. Department of Labor, Washington, D.C., is the sole issuing agency.

Q: How is a wage determination obtained?

A: The Washington Office of the Division of Hospital and Medical Facilities will obtain wage determinations from the Secretary of Labor.

Applicants will submit requests for wage determinations six weeks prior to the date set for releasing the plans and specifications for bidders.

Applicants for the following programs will submit their requests through the appropriate State agency:

Hospital and Medical Survey and Construction (Hill-Burton)

Facilities for the Mentally Retarded

Community Mental Health Centers

Appalachian Regional Development Act of 1965

Vocational Rehabilitation Administration Construction Grant Program

Applicants for the following programs will submit their requests directly to the appropriate Public Health Service Regional Office:

Health Professions Teaching Facilities

Nurse Training Facilities

University - Affiliated Facilities for the Mentally Retarded

Applicants for the following programs will submit their requests to the Chief, Office of Architecture and Engineering, Division of Research Facilities and Resources, National Institutes of Health, Bethesda, Maryland 20014:

Health Research Facilities

Centers for Research on Mental Retardation and Related Aspects of Human Development

Q: What information is required when a request for a wage determination is submitted?

A: The project applicant initiates the request by letter containing the following information:

Name, project number, and location, including county.

Type of project, i.e., new hospital, nursing home, diagnostic and treatment center, school of nursing, school of podiatry, State health laboratory.

Estimated cost of construction.

Description of project, type of building, number of stories, number of elevators, air conditioned or not.

Name and address of project architect.

List of other projects that are under construction or have recently been constructed in the area; including type of building, cost, and the contractor's name and address.

Q: What does the applicant do with a wage determination?

A: Upon receipt of the wage determination, the applicant:

Includes a copy of the wage determination as a part of the bidding documents (specifications).

Ensures that the successful bidder will post the wage determination and all amendments thereto in a prominent place at the site of the work.

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Q: When a wage determination contains schedules of minimum wages for more than one category, how does the applicant decide which to use?

A: Wage determinations, when received from the Department of Labor, frequently contain 3 schedules, i.e., building construction, heavy construction, and highway construction. If the majority of the work in a project is building construction, applicants will use the building schedule of wages for the entire project. However, if building construction constitutes only a small portion of the project then one of the other more appropriate categories may be used.

Q: May a wage determination be used for a project other than that shown on the wage rate schedule?

A: Under no circumstances may the original wage determination or redetermination for a particular project be used for any other project.

Q: May more than one contract be awarded on the same project using the same wage determination?

A: Yes, providing it has not expired.

Q: What happens if the wage determination expires after the opening of bids and prior to the award of the contract?

A: A new wage decision must be obtained for inclusion in the contract. If the successful bidder will not accept the wage redetermination without increasing the contract price, the owner may award the contract and pay any increase occasioned by this action without Federal participation or, all bids must be rejected and new bids must be obtained. Federal funds cannot be used to compensate the contractor for any change in the wage determination in such case.

Q: How are missing classifications obtained after the project is under construction?

A: After the contract award, the applicant through the project architect shall classify conformably and in accordance with the prevailing wages in the area any class of laborers or mechanics that was not listed originally in the wage determination. The applicant will report the prevailing rate of pay which the contractor is paying for these classifications to the Public Health Service for transmittal to the Department of Labor for final determination. In the event the interested parties cannot agree on the classification or reclassification of a particular class of laborers or mechanics to be used, the question accompanied by the recommendations of the applicant shall be referred to the Secretary of Labor, through the Public Health Service for determination.

PICK-UP PROJECTS

Q: What is a pick-up project?

A: A pick-up project is a construction project which is under construction at the time application is made for Federal participation.

Q: What specific information is necessary when requesting a wage determination for pick-up projects?

A: The effective pick-up date for the project shall appear on the request for the wage determination. The classifications and hourly rates of pay for all laborers and mechanics employed on the site shall accompany the request.

FRINGE BENEFITS

- Q: What is the fringe benefits provision of the Davis-Bacon Act?
- A: The 1964 amendments to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) the basic hourly rate of pay, and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits. Any contractor or subcontractor must pay fringe benefits or their cash equivalent, when such benefits are contained in the wage determination included in the particular contract.
- Q: What are fringe benefits?
- A: Fringe benefits are contributions by the contractor and subcontractor to a fund, plan, or program and include payments for medical and hospital care, pension, life insurance, vacation, and holiday pay.
- Q: How are fringe benefits included in a wage determination?
- A: The wage determination designates:
- The basic rate of pay.
- All fringe benefits applicable to each basic rate.
- Q: How does a contractor pay fringe benefits if he has no provision for making contributions to a fund, plan, or program?
- A: Payment is made in cash, directly to all employees on the construction project.
- Q: How does the contractor or subcontractor indicate that he is paying the required fringe benefits?
- A: Contractors and subcontractors shall include the following statement on all payrolls containing fringe benefits: "I CERTIFY THAT THE FRINGE BENEFITS PAID ARE EQUAL TO OR GREATER THAN THOSE SET FORTH IN THE MINIMUM WAGE DECISION." The certification shall be signed by an authorized representative of the contractor or subcontractor.

PAYROLL RECORDS AND CERTIFICATION

- Q: How does the contractor furnish the owner proof that he is paying the established wage rates?
- A: In addition to those required elsewhere, contractors and subcontractors must submit weekly a copy of all payrolls to the owner. The copy shall be accompanied by the statement signed by an authorized representative of the contractor or subcontractor that: "THE WAGE RATES CONTAINED HEREIN ARE NOT LESS THAN THOSE DETERMINED BY THE SECRETARY OF LABOR, AND THE
- CLASSIFICATIONS SET FORTH FOR EACH LABORER OR MECHANIC CONFORMS WITH THE WORK HE PERFORMS."
- Q: Does the applicant retain the payrolls and for how long?
- A: Yes, for a period of 3 years from the completion of the contract. Payrolls shall be made available for inspection by authorized representatives of the State agency, Secretary of Labor, and the Surgeon General.

Q: Is it required that payroll records be maintained by the contractors for a specified length of time?

A: Yes, payrolls for all laborers and mechanics working at the site of the work must be maintained at the site during the course of the work and preserved for a period of 3 years thereafter in the office of the contractors.

Q: To whom is the contractor required to make payroll records available?

A: The contractor must make such records available for inspection by authorized representatives of the State agency for such programs as are administered by the State, the Secretary of Labor, and the Surgeon General, and must permit such representatives to interview employees during the working hours on the job as required.

Q: What certification is required on the contractor's payrolls to indicate that fringe benefits have been paid?

A: Contractors and subcontractors shall include the following statement on all payrolls containing fringe benefits: "I CERTIFY THAT THE FRINGE BENEFITS PAID ARE EQUAL TO OR GREATER THAN THOSE SET FORTH

IN THE MINIMUM WAGE DECISION." The certification shall be signed by an authorized representative of the contractor or subcontractor.

Q: What information must the payroll records include?

A: The payrolls must show the name and address of each employee, his correct classification, hourly rate of pay, payment of fringe benefits, daily and weekly number of hours worked, deductions made, and actual wages paid.

Q: Are deductions permitted from wages due an employee?

A: Only payroll deductions listed under Section 4, Labor Standards Provisions in "Labor Standards Provisions for Construction Grant Programs," are permitted without written approval of the Secretary of Labor.

Q: Who is responsible for obtaining payroll records, compliance certificates, and other required data from subcontractors?

A: The owner is responsible for obtaining such data from the contractors he employs.

BASIC RATES OF PAY AND OVERTIME

Q: What is the basic hourly rate of pay?

A: The basic hourly rate is the actual straight time rate paid to the employee exclusive of fringe benefits. However, the basic hourly rate may not be less than the predetermined rate applicable to the contract work as shown on the wage determination.

Q: How is overtime computed?

A: Overtime is computed at one and one-half times the basic hourly rate paid by the contractor but not less than the rate shown on the wage determination (exclusive of fringe benefits) and shall be paid for all hours in excess of an 8-hour day or 40-hour week, whichever is the greater number of overtime hours or most advantageous to the employee.

APPRENTICES, HELPERS, GUARDS, AND WATCHMEN

Q: What is an apprentice?

A: The term, apprentice, means persons employed in a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee of Apprenticeship, United States Department of Labor or if no such council exists in the State, in a program registered with the Bureau of Apprenticeship, U.S. Department of Labor.

Q: How is the rate of pay for apprentices established?

A: If an apprentice is employed under a duly registered program, the hourly rates of pay are established by the State Apprenticeship Council, based on the ratio to that rate of pay established for journeymen under the original wage determination.

Q: Is the classification "helper" acceptable?

A: The Labor Department does not normally recognize such a classification; however, in areas where the employment of helpers is common practice and proof thereof can be furnished, the contractor may receive a designation of rate of pay for helpers upon application to the Regional Public Health Service Office.

Q: How do you determine the rate of pay for guards and watchmen?

A: The Department of Labor does not include in a wage determination, rates of pay for guards and watchmen. The contractor shall establish the rates of pay which will be submitted to the Public Health Service for approval.

Q: Are guards and watchmen employed on the site of the work by the contractor covered by the Contract Work Hours Standards Act?

A: Yes, both categories are paid overtime in accordance with the Contract Work Hours Standards Act.

Q: What is required of the contractor or subcontractor as evidence that all apprentices are duly registered under an acceptable apprentice training program?

A: A certificate of agreement between the Division of Apprenticeship Training of the State or of the U.S. Department of Labor and the employee, both of whom shall be named in the agreement.

WAGE VIOLATIONS AND LIQUIDATED DAMAGES

Q: What violations are most frequently encountered?

A: Employees being carried on the payrolls as laborers are either permitted or being instructed to do journeyman mechanics work. When laborers use the "tools of the trade" normally used by journeymen, they must be paid journeymen's rate of pay regardless of their lack of training, experience, or skill as a journeyman.

Classifying an employee as an apprentice who is not registered under an approved apprenticeship training program. Unregistered apprentices, except for special circumstances involving a preapprentice trial period duly recognized by the State Apprenticeship Council, must be paid the rate of pay established for journeymen for the trade in which they are employed.

Workmen being allowed or required to work more than 8 hours per day and/or 40 hours per week without being paid one and one-half times the basic hourly rate for all overtime in accordance with the Contract Work Hours Standards Act.

Contractors or subcontractors are employing a disproportionate number of unskilled workmen or laborers to skilled workmen. In such cases, it is usually found that the unskilled workmen or laborers using the "tools of the trade" are in effect doing journeymen's work. In these instances, such workmen must be reimbursed at the rate of pay established for journeymen, for the time they actually used the "tools of the trade."

Q: Is continuous surveillance over contractors on-site labor practices necessary?

A: Yes, continuous surveillance by the applicant is necessary to forestall violations and when violations do occur, to accomplish immediate corrective action.

Q: What is the recommended procedure for handling wage violation complaints?

A: Procedure should generally be as follows:

If the complaint is received by the Division of Hospital and Medical Facilities' Washington Office, it will be forwarded to the appropriate regional office.

On projects where no State agency is involved, the regional office upon receipt of the complaint, from whatever source it arises, should contact the applicant, give the State agency as much detailed information as is available, and request the State agency to conduct the investigation and offer any assistance necessary.

The investigation should be made in such a way that the employee's identity will not be disclosed to the employer without the employee's written consent.

The State agency or the applicant, as the case may be, should investigate the complaint and make a written report to the regional office. This report should be detailed and contain all the necessary information including the results of contacts with the complainant and the contractor with sufficient information for the regional office to make a determination upon which they can recommend a definite course of action concerning the complaint.

If restitutional payment is involved in an amount less than \$500, no formal report is necessary to the U.S. Department of Labor or the Washington Office of the Division of Hospital and Medical Facilities except in cases where the complaint originated from the Department of Labor or the violation is willful. If restitutional payment exceeds \$500, a written report to the Department of Labor is required. This report should always contain a definite recommendation from the regional office to the effect that "the files be closed" or some other appropriate action be taken, depending upon the circumstances disclosed in the investigation.

Q: What are liquidated damages as they apply to the Contract Work Hours Standards Act?

A: Liquidated damages may be assessed against the contractor who fails to pay overtime for hours in excess of the 40-hour week or the 8-hour day. This assessment is in addition to the amount of restitutional overtime wages paid to the employee.

Q: Can money be withheld from contractors to satisfy their liabilities in connection with violations of the Davis-Bacon Act and the Contract Work Hours Standards Act relating to overtime requirements?

A: Yes, the Surgeon General, the State agency on projects administered by them, and the owner or his representative, may withhold from the contractor so much of accrued payments or advances or monies payable on account of work performed as may be considered necessary to pay laborers and mechanics employed by the contractor or subcontractor on the work the full amount of wages required by the contract including liquidated damages.

Q: Who has the responsibility to investigate and resolve complaints for alleged wage violations?

A: On projects being administered by a State agency, the State has the responsibility to investigate, resolve the complaint, and report its findings to the regional office. On projects where no State agency is involved, the regional office has the responsibility.

Q: How are violation complaints reported?

A: Complaints about Davis-Bacon and Contract Work Hours Standards Act violations come from such sources as:

Labor unions, who may report directly to the Department of Labor, the appropriate State agency, a senator or congressman, the Public Health Service Regional Office, or the Washington Office of the Division of Hospital and Medical Facilities.

Employees on the project who feel that they have been unfairly treated may make their complaint to the Department of Labor, a labor union representative, the regional office, or the applicant.

Q: What does the contractor do with unclaimed checks resulting from underpayments or alleged violations, when the employees cannot be located?

A: Another check is drawn, payable to the "Treasurer of the United States" for the amount due the employee or employees, and sent to the Washington Office. The name or names of the employees and the amount due each employee will accompany the check by memorandum with the contractor's name and address.

EQUAL EMPLOYMENT OPI

Q: What is the purpose of Executive Order 11246 (Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors)?

A: To ensure that there will be no discrimination against any employee or applicant for employment in Government or federally-assisted construction contracts because of race, creed, color, or national origin.

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A: Yes,
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Q: What is the meaning of "Construction Contract" as used in this Executive Order?

A: Section 302(a) of the Executive Order defines "Construction Contract" as any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

Q: What is the "Contracting Agency" in relation to federally-assisted contracts?

A: For the application of the provisions of the Executive Order to "construction contracts" as defined above, the administering department or agency shall be considered the "contracting agency."

Q: What is required of the applicant to implement Executive Order 11246?

A: Each applicant shall:

Assist and cooperate actively with representatives of the Surgeon General, State agency, and Secretary of Labor in obtaining the compliance of contractors and subcontractors with the provisions of the Executive Order;

Obtain and furnish such information as may be required for compliance;

Carry out sanctions and penalties imposed upon contractors and subcontractors for violation of obligations under the Executive Order;

Refrain from entering into any contract or extension or modification of a contract subject to the Executive Order with a contractor debarred from Government contracts under the Order;

Shall include in all prime contracts and subcontracts thereof, paragraphs 1-7, Section 202, Part II of the Executive Order and;

Shall be responsible for contractors and subcontractors sending required notices to labor unions and other representatives of workers advising of the contractors' and subcontractors' commitments under Section 202 of Executive Order 11246.

Q: Where may Executive Order 11246 be obtained?

A: The Federal Register of September 24, 1965, contains this Order and is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at 15 cents per copy.

Q: What data in connection with compliance of Executive Order 11246 is provided by the Public Health Service?

A: The data provided is the Nondiscrimination in Construction Contract Employment portion of the Executive Order which is contained in the 1967 revision of Labor Standards Provisions for Construction Grant Programs.

HOSPITAL AND MEDICAL FACILITIES SERIES

"Publications of the Division of Hospital and Medical Facilities," Public Health Service Publication No. 930-G-3 (Revised 1966), will be provided upon request. For a free single copy, write to:

Division of Hospital and Medical Facilities
Public Health Service
U.S. Department of Health, Education, and Welfare
Washington, D.C. 20201

This annotated bibliography presents a brief description of each of the publications issued in the following general subdivisions:

The Hill-Burton Program
Health Professions Education
Facilities for the Mentally Retarded
Mental Health Facilities

Publications must be ordered by their complete title and publication number.